

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

PAUL SAM GROSSMAN

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2278

Decision No. CU 5958

Counsel for claimant:

Tourkow, Danehy & Crell
By Frederick R. Tourkow, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$150,462.97, was presented by PAUL SAM GROSSMAN based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and

debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant asserts the following losses:

Denis-Modas, S. A. stock interest	\$117,390.97
Land	18,027.00
Personal property	<u>15,045.00</u>
	<u>\$150,462.97</u>

The evidence includes copies of trial balances for Denis-Modas, S.A.; affidavits from individuals having personal knowledge of the pertinent facts; contemporary correspondence; reports from abroad; copies of claimant's tax returns, and statements of counsel for claimant concerning this claim.

On the basis of the entire record and taking into consideration the community property laws of Cuba, the Commission finds that claimant and his wife, a nonnational of the United States, each owned a one-half interest in certain properties in Cuba, discussed in detail below. (See Claim of Robert L. Cheaney and Marjorie L. Cheaney, Claim No. CU-0915.) No claim has been filed by claimant's wife or on her behalf because she was not a national of the United States at all pertinent times, a prerequisite for favorable action pursuant to Section 504(a) of the Act which provides as follows:

A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The claim appears however to have been based on the total value of the interests of claimant and his wife. For the reasons stated above, so much of the claim as is based on the interest of Esther Grossman is denied.

Denis-Modas, S.A.

The record shows that Denis-Modas, S.A., a Cuban corporation, was engaged in the manufacture of clothing in Cuba. Prior to its incorporation in 1956, this enterprise was operated as a partnership, its partners being claimant; Alejandro Fiegler, his father-in-law; and Marcos Fiegler, his brother-in-law. The evidence includes a letter of June 4, 1965 from The Royal Bank of Canada in the Havana Branch of which the enterprise maintained bank accounts. That letter sets forth balance sheets for the Cuban corporation as of December 31, 1956 and December 31, 1959, which were reported to the Bank as signed by the company auditors. The "Partners' Accounts" appear therein.

Upon incorporation, claimant and his brother-in-law, a nonnational of the United States, became the sole stockholders of the Cuban corporation, their interests being 20/35 and 15/35, respectively.

Based upon the entire record, the Commission finds that claimant and his wife jointly owned a 20/35 interest in the Cuban corporation.

In an affidavit of December 6, 1967, claimant's mother-in-law, who served as Treasurer, states that all records, deeds and the stock certificates relating to the Cuban properties in question were left with her aunt who was later compelled to destroy them because of harassment from Cuban officials. These statements are supported by other affidavits from officers and employees of the Cuban corporation. It appears that the trial balances were the only records removed from Cuba.

It appears from the evidence of record that claimant and his wife and children left Cuba in May, 1960. The enterprise was then in the custody of claimant's parents-in-law who left Cuba in May and June 1961, respectively. In June 1961 the enterprise was entrusted to another relative. In an affidavit of April 22, 1967, this relative stated that in June 1961, one week after claimant's father-in-law left Cuba, the enterprise was taken by Cuba.

On the basis of the foregoing and in the absence of evidence to the contrary, the Commission finds that Denis-Modas, S.A. was taken by the Government of Cuba on June 30, 1961.

Since Denis-Modas, S.A. was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant asserts the loss of \$117,390.97 on account of the 20/35 interest in the Cuban corporation. A copy of a schedule accompanying claimant's tax returns indicates the following computation of loss:

1. He computed the net worth of the Cuban corporation on the basis of the trial balance of May 31, 1960, as \$170,434.20.
2. He estimated that the net earnings of the Cuban corporation for the period from May 31, 1960 to June 1961, the date of loss, were \$35,000.00.

3. He then computed the 20/35 interest in the aggregate amount of \$205,434.20 (items 1 and 2 above) as \$117,390.97.

An examination of the record fails to disclose any evidence to support claimant's assertion respecting the estimated profits of \$35,000.00. The evidence includes a schedule prepared by the auditor showing estimated net profits of the Cuban corporation for the period from January 1, 1960 to May 31, 1960 to be \$2,379.93.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown by a trial balance for the Cuban corporation as of May 31, 1960. The accuracy of that trial balance is attested to by the auditor and others.

The trial balance shows the financial condition of the Cuban corporation as follows, the Cuban peso being on a par with the United States dollar:

ASSETS

Cash on hand and in banks		\$ 16,166.04
Notes receivable		60,510.08
Accounts receivable		69,938.84
Ferrocarriles Occidentales		
de Cuba, S.A. - stock interest		100.00
Good will		5,000.00
Inventory		48,002.58
Furniture and equipment	\$ 7,781.50	
Less depreciation	<u>1,698.82</u>	6,082.68
Organization expenses,		
less amortization of \$118.60		474.35
Improvements, less amortization		
of \$255.46		1,034.86
Miscellaneous assets		3,854.56
Almacenes Royal, S.A. -		
stock interest		49,060.86
Patents		90.50
Accounts receivable - due		
from employees		<u>961.48</u>
Total Assets		<u>\$261,276.83</u>

LIABILITIES AND CAPITAL

<u>Liabilities</u>		
Notes payable	\$ 51,073.49	
Loans payable	10,000.00	
Accounts payable	1,721.42	
Taxes payable	1,456.16	
Commissions payable	<u>2,432.55</u>	
Total Liabilities		\$ 66,683.62

Capital

Capital stock issued -
350 shares at \$100.00
per share

\$ 35,000.00

Surplus

135,434.20

Total Capital and Surplus

\$170,434.20

Excess of other credits
over other debits

24,159.01

Total

\$261,276.83

According to the affidavit of October 9, 1970 from claimant's wife, former office manager and bookkeeper for the Cuban corporation, the item "Good will" in the said trial balance had been acquired by the partnership which later was incorporated as Denis-Modas, S.A. This item of good will is shown in the balance sheets for 1956 and 1959 as set out in the letter of June 4, 1965 from The Royal Bank of Canada. Good will was listed in those balance sheets with a value of \$5,000.00.

On the basis of the entire record the Commission finds that good will in the amount of \$5,000.00 constituted an asset of the Cuban corporation on June 30, 1961, the date of loss.

The Commission further finds that organization expenses in the amortized amount of \$474.35 also constituted an asset of the Cuban corporation on the date of loss because the surplus account in the amount of \$135,434.20, as shown in the trial balance as of May 31, 1960, establishes that the enterprise was earning profits. Therefore, the organization expenses enhanced the value of the enterprise and represented a valuable asset.

It is also noted that the accounts receivable due from employees in the amount of \$961.48 are shown in the trial balance as "Vacations Payable" on the asset side thereof. Upon inquiry, it was ascertained that this item was a prepaid expense. The Commission therefore finds that this item constituted an asset of the Cuban corporation on the date of loss. Its designation has been changed to Accounts receivable due from employees.

The record also shows that none of the accounts or notes receivable was due from any American concern.

CU-2278

As noted above, claimant asserted the net worth of the Cuban corporation on May 31, 1960 as \$170,434.20, constituting the aggregate of capital and surplus, as shown above. The \$24,159.01 represents the balance of all items in the trial balance as of May 31, 1960 other than assets or liabilities. These items, in part, constitute the basis for preparing a profit and loss statement for the period ending May 31, 1960.

In a letter of March 12, 1970 to counsel for claimant, the auditor stated that he is unable to prepare a balance sheet and profit and loss statement because the trial balance as of May 31, 1960 shows only the opening inventory and that it was impossible under the circumstances to ascertain the amount of the inventory at the end of the period. However, the record includes a schedule prepared by the auditor, in which he estimated the net profit of the Cuban corporation for the 5-month period ending May 31, 1960 as follows:

Net sales (gross sales of \$135,263.76 less returns and allowances of \$4,382.24, as shown in the trial balance as of May 31, 1960)	<u>\$130,881.52</u>
Estimated gross profit (19% of \$130,881.52, based upon earnings in 1959)	\$ 24,867.49
Less estimated general expenses (excluding other items already considered by taking 19% of the gross sales)	<u>22,487.56</u>
Estimated net profit	<u>\$ 2,379.93</u>

On the basis of the entire record, the auditor's computations appear fair and reasonable. In this connection, it is noted that the auditor had also prepared a trial balance for the Cuban corporation as of April 30, 1960, and had set forth in the form of a comparative trial balance the changes that occurred with respect to the various items therein as a result of transactions between April 30, 1960 and May 31, 1960. Since the surplus is shown as \$135,434.20 as of April 30, 1960 and May 31, 1960, it is clear that the estimated net profit of \$2,379.93 was not added to the surplus.

The said estimate of net profit for the 5-month period ending May 31, 1960 is to be distinguished from claimant's estimate of profits in the amount of \$35,000.00 from May 31, 1960 to the date of loss. The accountant's estimate, which he states is not "the exact profit but it should be close", was based upon actual sales, actual expenses and a percentage of gross profit experienced in 1959. Claimant's estimate apparently is based upon the same percentage of profit, but the sales and expenses for the period covered by his estimate are entirely speculative and not supported by the record.

Considering the entire record, the Commission finds that the net worth of the Cuban corporation on June 30, 1961, the date of loss, was \$172,814.13, representing the net worth of \$170,434.20, as shown in the trial balance as of May 31, 1960, and the unrecorded net profit of \$2,379.93, as computed by the auditor. Since there were 350 shares of outstanding capital stock on the date of loss, the value of each share was \$493.754657. Therefore, 200 shares had a value of \$98,750.93, and claimant's one-half interest therein had a value of \$49,375.47.

Land

Claimant asserts the following losses of land in Cuba:

One-half interest in 2 lots in Biltmore, Havana	\$ 9,100.00
One-half interest in 2 lots in Varadero, Matanzas	4,750.00
One-half interest in another lot in Varadero, Matanzas	2,250.00
One-half interest in 2 lots in Jibacoa, Havana (amount paid on account of purchase price)	<u>1,927.00</u>
Total	<u>\$18,027.00</u>

On the basis of reports from abroad and affidavits from claimant and others, and from Cuban attorneys who prepared the necessary sales agreements, the Commission finds that claimant and his wife jointly owned one-half interests in the said 7 lots.

The evidence includes an affidavit of April 26, 1967 from claimant's wife attesting on the basis of personal knowledge that the 3 lots in Varadero, Matanzas were taken by the Government of Cuba in April 1960. Based upon the foregoing and in the absence of evidence to the contrary, the Commission finds that the said 3 lots in Varadero, Matanzas were taken by the Government of Cuba on April 15, 1960.

Claimant states that the other lots were taken by Cuba in 1961.

On December 6, 1961, the Cuban Government published in its Official Gazette its Law 989, which effected the confiscation of all assets, personal property and other rights of persons who had left the country. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that his interests in the other 4 lots were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Claimant's valuations of the 7 lots are based upon the purchase prices therefor, including necessary fees, which are supported by the evidence of record. Accordingly, the Commission finds as follows with respect to the values of claimant's one-fourth interests in the 7 lots (one-half of the one-half interest jointly held by claimant and his wife):

1. 2 lots in Biltmore on December 6, 1961, the date of loss: \$4,550.00
2. 3 lots in Varadero on April 15, 1960, the date of loss: \$3,500.00
3. Equity in the 2 lots in Jibacoa on December 6, 1961, the date of loss: \$963.50.

Therefore, claimant sustained a loss of \$3,500.00 on April 15, 1960, and a loss of \$5,513.50 on December 6, 1961.

Personal Property

The Commission finds on the basis of the evidence of record that claimant and his wife jointly owned certain household effects at their residence in Nuevo Vedado, Havana, Cuba. In addition they jointly owned a 1958 Edsel

automobile located at their residence. Claimant states that all of the foregoing items of property were taken in 1961.

The Commission finds, in the absence of evidence to the contrary, that the said personal property was taken by the Government of Cuba on December 6, 1961 pursuant to Law 989 (supra).

Claimant asserts that the aggregate value of the various items of personal property, including the automobile, was \$15,045.00, as shown in a detailed list submitted to the Internal Revenue Service and resubmitted to the Commission.

The Commission concludes that the items of personal property were subject to depreciation as follows:

Automobile	15% per year
Furniture	5% per year
Clothing and library	20% per year
All other items of personal property (lamps, drapes, etc.)	10% per year

Upon consideration of the entire record, the Commission finds that the values of the various items of personal property on December 6, 1961, the date of loss, were as follows:

Automobile - depreciated for 3 years at 15% per year (55% of \$3,200.00)	\$ 1,760.00
Furniture - depreciated for 3 years at 5% per year (85% of \$2,300.00)	1,955.00
Clothing and library - depreciated for 3 years at 20% per year (40% of \$1,500.00)	600.00
All other items - depreciated for 3 years at 10% per year (70% of \$8,045.00)	<u>5,631.50</u>
Total	<u>\$ 9,946.50</u>

Therefore, claimant's one-half interest therein had a value of \$4,973.25.

Recapitulation

Claimant's losses are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Denis-Modas, S.A.	June 30, 1961	\$49,375.47
<u>Land:</u>		
2 lots in Biltmore and 2 lots in Jibacoa	December 6, 1961	5,513.50
3 lots in Varadero	April 15, 1960	3,500.00
Personal property	December 6, 1961	<u>4,973.25</u>
	Total	<u>\$63,362.22</u>

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:


<u>FROM</u>	<u>ON</u>
April 15, 1960	\$ 3,500.00
June 30, 1961	49,375.47
December 6, 1961	<u>10,486.75</u>
Total	<u>\$63,362.22</u>

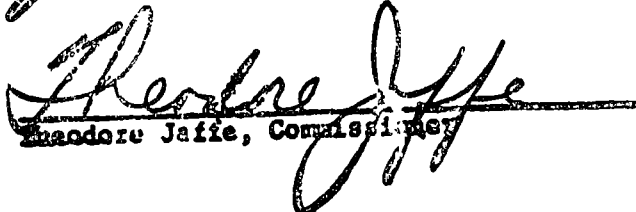
CERTIFICATION OF LOSS

The Commission certifies that PAUL SAM GROSSMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-three Thousand Three Hundred Sixty-two Dollars and Twenty-two Cents (\$63,362.22) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 10 1970


Lytle S. Carlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)